IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 259 of 1995

For Approval and Signature:

THE HON'BLE MR.JUSTICE A.M.KAPADIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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MUNIRABIVI WD/O MOHMAD HAFIZ SIDIKBHAI, &2 - Petitioner(s)

Versus

RANGWALA REHNA WIDOW OF TAIYABHAI &2 - Respondent(s)

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Appearance :

MR PV NANAVATI for Petitioner No(s).: 1 - 1.
MR GIRISH D BHATT for Respondent No(s).: 1/1 to 1/3.
MR MAHENDRA K PATEL for Respondent No(s).: 2 - 2.

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CORAM :THE HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 27/06/2005

ORAL JUDGMENT

1. By filing instant petition under Section 115 of the Code of Civil Procedure ('the Code' for short), the petitioners seek

to challenge the order dated 25.11.1994 recorded below application Ex.12 in Civil Appeal No.95 of 1992 by the Appellate Bench of the Small Causes Court, Ahmedabad by which the application filed by the petitioners seeking the amendment in the written statement at the appellate stage came to be rejected.

2.The deceased petitioner was the original defendant No.1, respondent No.1 is the landlord whereas respondent No.2 is alleged to be the original tenant. Respondent No.1/plaintiff instituted Civil Suit No.4199 of 1986 in the Small Causes Court, Ahmedabad against the petitioner as well as respondent No.2 for recovery of possession of the suit premises on the ground of sub-letting of the suit premises to the petitioner by respondent No.2/original tenant and on other grounds. The suit came to be decreed for possession.

3. Aggrieved by the said decree, the petitioners preferred Civil Appeal No.95 of 1992 before the Appellate Bench of the Small Causes Court. When the appeal came up for hearing before the Appellate Bench of the Small Causes Court, the petitioner moved an application vide Ex.12 seeking amendment in his written statement which was filed by him at Ex.32 and also prayed that after the amendment is allowed, the matter may be remanded to the lower court for framing the issues as to whether the petitioner has purchased the running business of Solanki Hair Cutting Saloon alongwith its good-will, stock and trade, assets, etc. In the said application it was inter-alia averred that the petitioner has bought the running business alongwith its goodwill from the respondent No.2/original tenant in the presence of the landlord and that he had told this fact to his advocate also and he had also shown relevant

documents to him. However, the learned advocate did not take up any specific contention in the written statement and hence no issue was framed for want of specific contention to that effect in the written statement. According to the petitioners, the entire transaction had taken place in the presence of the landlord. Respondent No.1/original plaintiff knew about the purchase of the running business and therefore the petitioners prayed for the relief of permitting them to make amendment in the written statement.

4. The application was contested by respondent No.1 by filing reply at Ex.13, inter-alia, contending that at the appellate stage the application for amendment in the written statement filed in the matter is not maintainable. According to him, it is nothing but an attempt on the part of the petitioners to adduce additional evidence in the appeal by circumscribing Order 41 Rule 27 of the Code. The evidence led by the petitioners was within their power and possession when the suit was tried and if they withheld the same they cannot be permitted to produce the same by a amending the written statement and incorporating the ground which was never in existence earlier. It was also pleaded that full evidence was recorded by the trial court and in the evidence also nowhere the petitioners have stated about entering into a transaction of purchase of the good-will of the running business and hence a new story is being developed at the appellate stage which cannot be permitted. He, therefore, prayed to dismiss the application.

5. The appellate Bench of the Small Causes Court heard the learned advocates appearing for the parties and rejected the

application which has given rise to the present petition at the instance of the original defendant No.1 in the suit and the appellant in Civil Appeal No.95 of 1992.

1. I have heard Mr. Vibhooti Nanavati, learned advocate for the petitioners, Mr. GD Bhatt, learned advocate for respondent Nos.1/1 to 1/3 and Mr. Mahendra K. Patel, learned advocate for respondent No.2, perused the impugned order, relevant provisions contained under the Code and the judgment cited at the bar.
2. There is no dispute that respondent No.1/original plaintiff instituted HRP Suit No.4199 of 1986 before the Small Causes Court, Ahmedabad against the petitioner as well as respondent No.2 seeking decree of eviction on the ground that the suit premises has been sub-let by respondent No.2/original tenant to the petitioner and on other grounds. The said suit came to be decreed. Aggrieved thereby, the petitioner preferred Civil Appeal No.95 of 1992 before the appellate Bench of the Small Causes Court which was placed for final hearing and at the time of final hearing of the appeal, the petitioners filed application vide Ex.12 seeking amendment in the written statement which came to be dismissed vide order dated 25.11.1994.
3. The record of the suit reveals that the original defendant No.2 did not file the reply till 11.1.1988 though the suit was filed on 26.12.1986. In para 4 of the written statement it was the case of the petitioner that the suit premises were taken on rent by the defendant No.2 from the father of defendant No.1 in the year 1959 and therefore he was a legal sub-tenant in the suit premises. It was also his case that he has been carrying on his business of Hair Cutting Saloon in the suit premises since 1959 after taking the suit premises on rent from the father of defendant No.1 and that defendant No.1 was serving in a mill and he had not done any business of hair cutting in the suit premises.
4. In view of the aforesaid clear averments made in the written statement by the petitioner, it is evident that the petitioner had come with a specific case that he was a lawful sub-tenant in the suit premises since 1959 and by the amendment the petitioner wants to introduce a new case of

having become owner of the business in the suit premises by having purchased the goodwill of running business with stock in trade and furniture from defendant No.1. It is therefore quite evident that a complete new case was sought to be introduced by the petitioner and it is running contrary to what he had pleaded earlier during the pendency of the suit. It may be noted that no amendment was sought for by the petitioner in his written statement during the pendency of the suit and after the suit was decreed against him and during the pendency of the appeal and only when the appeal came up for final hearing he has filed application for amendment in the written statement and therefore the proposed amendment is sought for only with a view to prolong the litigation and according to this court, the petitioner cannot be permitted to make altogether a new case other than the case put up at the time of trial and hence the proposed amendment was rightly rejected by the appellate Bench of the Small Causes Court.

5. The view taken by this Court is fortified by the judgment of the Bombay High Court in the case of **Purushottam alias Nana U. Sanyasi v. A.N. Jog and others**, 2005 A.I.H.C. 861. In the said case, against the order of eviction decree on the ground of illegal sub-letting, an appeal was filed and in the appeal, an application for amendment of written statement was filed. The amendment sought to introduce the fact that respondent tenant had assigned his running business along with stock-in-trade and good-will to respondents Nos.2 and 3 and thus there was no sub-letting. The assignment deed for the same was executed and registered before disposal of suit. Failure to bring it before trial Court was not explained. In the facts and circumstances of the case, the Bombay High Court has held that the respondent is not entitled to produce it as additional evidence in support of proposed amendment in view of O. 41 R.27 (1) in view of the fact that the amendment, if allowed, would prejudice the petitioner and the order allowing amendment application cannot be sustained.

6. Seen in the above content, the view taken by the Appellate Bench of the Small Causes Court rejecting the Application Ex.12 is just and proper as according to this court, in the facts and circumstances of the case, no other view was possible except the view taken by the appellate Bench of the

Small Causes Court and hence no interference is called for in this petition in exercise of the powers conferred under Section 115 of the Code.

7. For the foregoing reasons, the petition fails and is accordingly rejected with no order as to costs. Rule is discharged. Interim relief granted earlier stands vacated.

(A.M. Kapadia, J.)

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